86-104

Supreme Court, U.S.
FILED
JUL 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

THE BOARD OF AIRPORT COMMISSIONERS
OF THE CITY OF LOS ANGELES, et al.,
Petitioners,

VS.

JEWS FOR JESUS, INC., AND ALAN HOWARD SNYDER,
a.k.a. AVI SNYDER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES K. HAHN, City Attorney
JAMES H. PEARSON, Senior
Assistant City Attorney
JAMES R. KAPEL,*
Assistant City Attorney
#1 World Way
Los Angeles, CA 90009
(213) 646-3260
Attorneys for Petitioners
**Counsel of Record*

Bowne of Los Angeles, Inc., Law Printers (213) 742-6600

75pp

QUESTIONS PRESENTED FOR REVIEW

1. May an airport operator constitutionally limit the uses of the interiors of its terminal facilities to their dedicated and intended airport-related purposes or are those facilities public forums that require the airport operator to permit their use for non-airport related activities?

2. If the interiors of the terminal facilities at Los Angeles International Airport are not public forums, is the Board of Airport Commissioners' policy that limits the uses of those facilities to airport-related purposes a reasonable exercise of its right to reserve the uses of the terminal facilities to their dedicated and intended airport-related purposes?

LIST OF ALL PARTIES

Petitioner Board of Airport Commissioners of the City of Los Angeles ("Board") is charged by the Los Angeles City Charter with the management and control of the Los Angeles Department of Airports and the Los Angeles International Airport; Petitioner Johnnie L. Cochran, Jr. was the President of the Board and presently is a member of the Board; Petitioners Robert A. Chick, Maria D. Hummer and Samuel Greenberg were and presently are members of the Board; D.A. "Curt" Curtiss was a member of the Board at the time the initial action was brought but has since resigned the position and was replaced by Petitioner Jerry B. Epstein. Petitioner City of Los Angeles is a municipal corporation and the owner of the real property and facilities that comprise Los Angeles International Airport.

Respondent Jews for Jesus, Inc., is a California nonprofit religious corporation; Respondent Alan Howard Snyder, a.k.a. Avi Snyder, is a member and minister of the Jews for Jesus organization.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF ALL PARTIES	ii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL, STATUTORY, ETC., PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
THE INTERIORS OF AIRPORT TERMINAL FACILITIES ARE NOT TRADITIONAL PUBLIC FORUMS AND THE FACILITIES AT AIRPORTS HAVE NOT BEEN OPENED AS PUBLIC FORUMS	7
PETITIONERS HAVE NOT OPENED THEIR FACILITIES AT AIRPORT AS PUBLIC FORUMS BUT RATHER HAVE LIMITED THOSE FACILITIES TO THEIR INTENDED PURPOSES	11
CONCLUSION	16

Index to Appendices

Appendix A. Opinion of the United States Court of Appeals for the Ninth Circuit	A-1
Appendix B. Memorandum Decision and Judgment of the United States District Court	B-1
Appendix 1. Stipulation of Facts	1
Appendix 2. Resolution No. 13787	(1)
Appendix C. Los Angeles Board of Airport Commissioners Resolution No. 13787	C-1

TABLE OF AUTHORITIES

Cases

Page

City Council v. Taxpayers for Vincent, 466 U.S. 789, 80 L.Ed.2d 772, 104 S.Ct. 2118 (1984) 8, 13, 15

Cornelius v. N.A.A.C.P., 53 U.S.L.W. 5116, 473 U.S. ____, 87 L.Ed.2d 567, 105 S.Ct. 3439 (1985) 8, 11, 15

Fernandez v. Limmer, 663 F.2d 619 (5th Cir. 1981) 14, 15

Greer v. Spock, 424 U.S. 828, 47 L.Ed.2d 505, 96 S.Ct. 1211 (1976) 9

Hague v. C.I.O., 307 U.S. 496, 83 L.Ed. 1423, 59 S.Ct. 954 (1939) 8

Heffron v. International Society for Krishna Consciousness, 454 U.S. 640, 69 L.Ed.2d 289, 101 S.Ct. 2559 (1981) 6

ISKCON v. Barber, 650 F.2d 430 (2d Cir. 1981) ... 14

ISKCON v. Eaves, 601 F.2d 809 (5th Cir. 1979) ... 14

ISKCON v. Engelhardt, 425 F.Supp. 176 (D.C. Wis. 1977) 14, 15

ISKCON v. Rockford, 585 F.2d 263 (7th Cir. 1978) 14

ISKCON v. Wolke, 453 F.Supp. 869 (D.C. Wis. 1978) 14

Kuszynski v. Oakland, 479 F.2d 1130 (1973) 14, 15

Minnesota Bd. for Community Colleges v. Knight, 465 U.S. 271, 79 L.Ed.2d 299, 104 S.Ct. 1058 (1984) 11

Perry Ed. Assn. v. Perry Local Ed. Assn., 460 U.S. 37, 74 L.Ed.2d 794, 103 S.Ct. 948 (1983) 7, 12, 15

Rosen v. Port of Portland, 641 F.2d 1243 (1981) ... 14

U.S. v. Albertini, 53 U.S.L.W. 4844, 472 U.S. ____, 86 L.Ed.2d 536, 105 S.Ct. 2897 (1985) 9, 15

TABLE OF AUTHORITIES

CASES

Page

U.S. v. Grace, 461 U.S. 171, 75 L.Ed.2d 736, 103 S.Ct. 1702 (1983) 8

U.S. Postal Service v. Greenburgh Civic Assn., 453 U.S. 114, 69 L.Ed.2d 517, 101 S.Ct. 2676 (1981) 8, 12, 14

U.S.S.W. Africa/Namibia Trade and Cultural Council v. U.S., 708 F.2d 760 (D.C. Cir. 1983) 15

Constitution

United States Constitution, First Amendment 2, 6, 12, 14, 15

Statutes

United States Code, Title 28, Sec. 1254(1) 2

United States Code, Title 28, Sec. 1331 2

United States Code, Title 28, Sec. 1343(3) 2

United States Code, Title 42, Sec. 1983 ..... 2, 3

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

THE BOARD OF AIRPORT COMMISSIONERS OF THE CITY OF LOS ANGELES, et al.,
Petitioners,

VS.

JEWS FOR JESUS, INC.,
and ALAN HOWARD SNYDER,
a.k.a. Avi Snyder,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Board of Airport Commissioners of the City of Los Angeles, et al., petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, in this case.

OPINIONS BELOW

The Opinion of the Court of Appeals (App. A) is reported in 785 F.2d 791 (9th Cir. 1986).

The Memorandum Decision and Judgment of the District Court (App. B) was not reported.

JURISDICTION

The Judgment of the Court of Appeals was entered on March 25, 1986. An extension of time within which to file a Petition for Writ of Certiorari to and including July 23, 1986, was granted by the Honorable William H. Rehnquist. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The jurisdiction of this case in the District Court was based upon 28 U.S.C. §§ 1331, 1343(3).

CONSTITUTIONAL, STATUTORY, ETC., PROVISIONS INVOLVED

(1) The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

(2) Title 42 U.S.C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of

Columbia. R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 83 Stat. 1284."

(3) The Los Angeles Board of Airport Commissioners Resolution No. 13787 that is the subject matter of this litigation is set forth in Appendix C.

STATEMENT OF THE CASE

This case involves the constitutionality of Petitioner's Board of Airport Commissioners' Resolution that can be summarized as follows:

> "The Los Angeles International Airport shall be limited to airport-related uses only except that the sidewalk areas immediately outside of the terminal facilities may be used for activities protected by the First Amendment."

The Petitioners consistently have limited the uses of the interiors of the terminal facilities at Los Angeles International Airport ("Airport") to their intended airport-related purposes and consistently have discouraged and prohibited any uses other than those intended to aid the traveling public.

The facts in this case are not in dispute. Airport is owned by the City of Los Angeles and operated by the Department of Airports ("Department"), which is under the management and control of the Petitioner Board of Airport Commissioners. The duties and obligations of the Petitioners are set forth in the Los Angeles City Charter, which requires the Petitioners to operate all of their airport properties for the promotion and accommodation of air commerce and air navigation or uses incidental thereto. Accordingly, unless the Petitioners make a determination that a portion of Airport is not required for airport purposes, the Petitioners are required by their

Charter to devote airport property exclusively to those activities that aid the traveling public.

Respondent Jews for Jesus is a non-profit religious organization and Respondent Alan Snyder is a minister for that organization. Respondents wished to advance their religious cause by distributing religious pamphlets in the interiors of the terminal facilities at Airport. Respondents were informed of the Petitioners' policy restricting the uses of interiors of the terminal facilities to airport-related purposes only and were told to stop conducting their religious activities within the terminals. After Respondents were prevented from pamphleteering within the terminal facilities (but not on the sidewalks outside), they filed the present action to enjoin enforcement of Petitioners' Policy.

Respondents claimed that:

(1) The interiors of the terminal facilities at Airport were public forums (either traditional public forums or opened as forums) and, thus, their non-airport related activities could not be excluded from the interiors of the terminal facilities at Airport;

(2) Their activities were not incompatible with the operations of Airport and, therefore, must be permitted; and

(3) Petitioners' policy was vague and overbroad.

Respondents were not and have not been prevented from using the interiors of the airport terminal facilities at Airport for their own travel-related purposes. Rather, Respondents were deterred from using those facilities for their non-airport related, religiously related purposes. Likewise, Respondents were not prevented from using the sidewalk areas outside the terminal facilities at Airport for their religious distribution efforts. Further, there is absolutely no indication or allegation that Respondents

were singled out because of their particular message. Rather, Respondents are just one of the many charitable groups, religious organizations and commercial enterprises that have been denied use of the interiors of the airport terminal facilities at Airport because those activities would neither advance air navigation nor directly aid the traveling public.

The District Court for the Central District of California, on stipulated facts (a copy of which is attached to its Opinion in App. B.), treated the parties' trial briefs as cross motions for summary judgment and in an unpublished memorandum decision (App. B) declared the Petitioners' policy unconstitutional and enjoined its enforcement. In so deciding, the District Court determined that the interiors of the airport terminal facilities at Airport were public forums (probably traditional public forums).

The Ninth Circuit, in its Opinion (App. A), affirmed the judgment of the District Court and held that the terminal facilities at Airport were traditional public forums and, accordingly, could not be limited to their intended and dedicated airport-related purposes even though such a limitation is an entirely reasonable way to operate a government-owned facility dedicated solely to airport-related purposes.

REASONS FOR GRANTING THE WRIT

This Writ should be granted because this case involves important constitutional issues that continue to be clouded and ignored by lower courts regardless of a series of current decisions from this Court regarding the use of publicly-owned facilities. These issues involve the uses of a government facility as a public forum when, in fact, the facility is intended, dedicated, and used for entirely different, but essential, functions. These issues

involve the right of the government to construct and operate a facility dedicated to and intended for specific uses and to reasonably disallow all other unrelated uses including those protected by the First Amendment. The Ninth Circuit's Opinion concluded that the interiors of all airport terminal facilities are identical to the streets and parks that have been held in trust for assembly and debate. If the Ninth Circuit's decision is permitted to stand, its reasoning could be applied not only to all airport facilities but to a host of other government buildings that are designed and dedicated for purposes that are not related to or intended for First Amendment activities. The important constitutional questions recognized by this Court in *Heffron v. International Society for Krishna Consciousness,* 454 U.S. 640, 646, 69 L.Ed.2d 289, 101 S. Ct. 2559 (1981) and a series of other decisions of this Court regarding the use of public property for purposes for which they were not intended are present in this case.

Furthermore, it is submitted that these constitutional issues are of paramount importance and need to be authoritatively decided by this Court to clarify a confused area of the law that has developed over the years. Lower court opinions often rely on "earlier" Courts of Appeal decisions that neither are accurate statements of the law nor valid precedent on the public forum issues.

The decisions of the District and Circuit Courts regarding the uses of public buildings for uses other than their intended and dedicated uses are a confused hodge-podge of conflicting legal theories hopelessly at variance with the principles of decisions of this Court. These lower court decisions frequently rely on out-dated and oftentimes incorrect lines of case authority to reach conclusions that clearly conflict with current Supreme Court decisions. Furthermore, these lower court opinions re-

garding the uses of publicly owned facilities often rely on each other compounding the initial errors and creating an apparently impressive line of authority that, when examined closely, falls like a house of cards. This problem runs throughout the lower court decisions regarding the uses of a variety of government facilities but is most apparent in the decisions dealing with the lawful uses of airport terminal facilities.

The present case is a dramatic example of a court's disregard of the essential holdings of this Court and, instead, a reliance on inappropriate, discredited, or inapplicable lower court case law to find that all airport terminal facilities, regardless of their intended and dedicated purposes and their past uses, are essentially parks devoted to assembly and debate. Such a conclusion can only be the result of a total disregard of the holdings of relevant decisions by this Court regarding the right of a government to limit the uses of its facilities to their dedicated and intended purposes and to disallow any other uses of those facilities whether those unrelated uses are protected or not. The fact that a Circuit Court could reach such a conclusion is a prime example of the need for an authoritative decision by this Court with regard to the public forum doctrine as it applies to the interiors of government facilities.

THE INTERIORS OF AIRPORT TERMINAL FACILITIES ARE NOT TRADITIONAL PUBLIC FORUMS AND THE FACILITIES AT AIRPORTS HAVE NOT BEEN OPENED AS PUBLIC FORUMS

Traditional public forums are those places that by long tradition or by government fiat have been devoted to assembly and debate. *Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 U.S. 37, 45, 74 L.Ed.2d 794, 103 S.Ct. 948 (1983). Traditional public forums "have immemorially been held in trust for use by the public and . . . have been

used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. C.I.O.*, 307 U.S. 496, 515, 83 L.Ed. 1423, 59 S.Ct. 954 (1939). Streets, parks and sidewalks are prime examples of traditional public forums. *U.S. v. Grace*, 461 U.S. 171, 179, 75 L.Ed.2d 736, 743, 103 S.Ct. 1702 (1983). A principle purpose of a traditional public forum is the free exchange of ideas. *Cornelius v. N.A.A.C.P.*, 53 U.S.L.W. 5116, 5119, 473 U.S. ____, ____, 87 L.Ed.2d 567, 580, 105 S.Ct. 3439 (1985).

The Ninth Circuit erroneously concluded that the interiors of the terminal facilities at Airport are traditional public forums. This decision was based on a superficial analysis of current case law and reliance on inappropriate, inapplicable or out-dated lower court case law. Both Respondents and the Ninth Circuit failed "to demonstrate the existence of a traditional right of access respecting . . . [interiors of airport terminal facilities] for purposes of their communication comparable to that recognized for streets and parks . . ." *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814, 80 L.Ed.2d 772, 104 S.Ct. 2118 (1984). Without such a demonstration of a *traditional right of access for communicative purposes*, it is clearly improper to conclude that the terminal facilities at Airport are so comparable to streets, parks and sidewalks that they are traditional public forums.

There is no question that publicly owned property does not become a public forum simply because it is owned or controlled by the government. *U.S. Postal Service v. Greenburgh Civic Assn.*, 453 U.S. 114, 129, 69 L.Ed.2d 517, 101 S.Ct. 2676 (1981). Furthermore, the fact "that government property can be used as a vehicle for communication does not mean that the Constitution requires such uses to be permitted." *City Council v. Taxpayers for Vincent, supra*, at 814. Likewise, the fact that the public is freely

admitted to the property does not make a facility a public forum. *Greer v. Spock*, 424 U.S. 828, 830, 838, and n. 10, 47 L.Ed.2d 505, 96 S.Ct. 1211 (1976). *U.S. v. Albertini*, 53 U.S.L.W. 4844, 4847, 472 U.S. ____, ____, 86 L.Ed.2d 536, 546, 105 S.Ct. 2897 (1985).

Regardless of these clear principles, the Ninth Circuit chose to ignore them and to rely on older cases that considered public ownership, public admission, and the fact that the terminal facilities at Airport could be used for communicative purposes as determinative factors in deciding whether a public forum at Airport existed. There can be no doubt that a number of "airport cases" have concluded that certain protected activities could not be restricted by the particular "time, place and manner" restriction adopted by a particular airport authority. It is submitted, however, that these "airport cases" neither support the Ninth Circuit's decision nor, because of their particular facts, lend any support to the erroneous conclusion that the terminal facilities at Airport are traditional public forums or any type of public forum.

The interiors of airport terminal facilities are not held in trust to be used by the public for assembly and debate. Rather, they are intended, designed and dedicated to their airport-related purposes. The mere fact that some airport operators have opened their facilities to non-airport related activities does not mean, as the Ninth Circuit would have us believe, that all airport terminal facilities, regardless of their intended, dedicated and actual uses and regardless of their operator's intent, are either traditional public forums or any other kind of public forum.

Airport terminal facilities do not have as their principle purpose the free exchange of ideas. Airport terminal facilities have as their principle purpose the promotion of air transportation and aid to the traveling public. For the

Airport involved in this litigation, its exclusive purpose is the promotion of air navigation and aid to the traveling public. The Charter mandates that the Airport's facilities be used only for its intended and dedicated airport-related purposes and the Petitioners have followed this Charter obligation.

The Ninth Circuit's opinion in this case has created a new category of traditional public forum called "airport terminal buildings". According to the Ninth Circuit Court of Appeals, traditional public forums are no longer just those streets, parks and sidewalks held in trust for the public's use for assembly and debate. The Ninth Circuit Court of Appeals must have concluded that airport terminal facilities have a long tradition of access for communicative purposes that has been present for "time out of mind" in the streets and parks. The Ninth Circuit Court of Appeals' conclusion is ludicrous and flies in the face of the conclusions reached by this Court about the lawful uses of government-owned facilities.

Airports generally by their very nature are dedicated and intended to be used for airport-related purposes. Certainly an airport operator or any governmental entity operating a non-traditional forum facility may "open" its facility and use it, in part, as a public forum. Without such an intentional opening, however, a public facility dedicated to a non-communicative purpose and used only for that purpose is not a public forum, let alone a traditional public forum.

This Court has repeatedly stated that:

> "It is a fundamental principle of First Amendment doctrine, articulated most recently in *Perry Education, Assn. v. Perry Local Educators' Assn.* 460 U.S. ——, —— — ——, 74 L.Ed. 2d 974, 103 S. Ct. 948 (1983), that for government property to be a public

> forum, it must by long tradition or by government designation be open to the public at large for assembly and speech." *Minnesota Bd. for Community Colleges v. Knight,* 465 U.S. 271, 280, 79 L.Ed.2d 299, 309, 104 S. Ct. 1058 (1984).

It necessarily follows, that without that long tradition of use for communicative purposes, a government-owned facility cannot instantly become a traditional public forum.

It is submitted that the intended airport-related uses of the interiors of the airport terminal facilities at Airport are not comparable in any way to the intended communicative purposes of streets and parks so as to make the interiors of the terminal facilities at Airport traditional public forums.

PETITIONERS HAVE NOT OPENED THEIR FACILITIES AT AIRPORT AS PUBLIC FORUMS BUT RATHER HAVE LIMITED THOSE FACILITIES TO THEIR INTENDED PURPOSES

This Court has explained that: "[t]he government does not create a public forum by inaction or by permitting limited discourse but *only by intentionally opening* a nontraditional public forum for public discourse." *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d at p. 580. (Emphasis added.) Furthermore, this Court in *Cornelius* stated that "[w]e will not find a public forum has been created in the face of clear evidence of a contrary intent . . . ." *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d at p. 580.

Petitioners in this case neither intentionally nor unintentionally opened the interiors of its terminal facilities at Airport for public discourse. Petitioners' intent is clear from its long-standing policy reaffirmed by its Resolution 13787. Petitioners' intent is also clear from the actual

uses of its terminal facilities at Airport. Petitioners are required to limit and have limited the uses of the terminal facilities at Airport to their dedicated and intended airport-related purposes. If a proposed use does not directly aid the traveling public, it has been disallowed.

There can be no doubt that "... where government property is not dedicated to open communication the government may — without further justification — restrict use to those who participate in the forum's official business." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 53 (fn. omitted). Petitioners have consistently operated within this court's guidelines. Regardless of this clear right, the Ninth Circuit has disregarded the government's right to use its property for its intended and dedicated purposes and has declared that all airports, no matter how they have been dedicated or used, are public forums. No longer can any airport operator reserve its terminal facilities to their intended and dedicated purposes. Rather, the Ninth Circuit now compels every airport operator to open its facilities as public forums restricted only by time, place and manner regulations narrowly drawn and justified only by a showing of a compelling governmental interest. This ruling that airport terminal facilities must be made available for First Amendment activities, regardless of the legal mandates of the airport operator, is clearly contrary to this Court's conclusion that:

> "In addition to time, place and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not merely an effort to suppress expression merely because public officials oppose the speaker's view." *United States Postal Service v. Greenburgh, supra,* at p. 131; *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46.

See also *City Council v. Taxpayers for Vincent, supra,* at p. 814 and fn 31.

The Ninth Circuit's Opinion and the District Court's Opinion are both erroneous and superficial applications of the substantive law relating to the public forum, non-forum analysis. The opinions are replete with misstatements of the current law and reliance on inapplicable or inappropriate case law. If these decisions are permitted to remain uncorrected, they will breath new life into misconceptions that this Court has attempted to rectify by the series of its recent decisions dealing with the uses to which public facilities may be put.

The Ninth Circuit stated in this case that:

> "Since *Rosen* and *Kuszynski,* the law of this circuit has been that an airport complex is a traditional public forum. Every circuit which has confronted the issue has reached the same conclusion."

An examination of the "airport cases" establishes clearly that his conclusion is incorrect. The fact that the Ninth Circuit was able to reach such a conclusion from those cases is a prime example of the compelling need for an authoritative decision by this Court with regard to how the public forum analysis applies to the interiors of government-owned airport terminals as well as other government-operated facilities. Even if the Ninth Circuit were correct in concluding that the various circuit courts have determined that the interiors of airport terminal facilities are, without more, public forums, then such decisions are in direct conflict with the fundamental principles explained by this Court.

In reaching the above conclusion, the Ninth Circuit relied on circuit court cases that did not examine the issue of whether a government facility was, by that fact alone, a public forum but, rather, examined "time, place

and manner" restrictions for airports that had opened their facilities to expressive activities. The present case does not involve the review of such a restriction but, rather, involves the obvious right of an airport operator to limit its facilities to their intended and dedicated purposes. A time, place, and manner restriction of permissible expressive activities is governed by a different standard than that used to govern a reservation of government facilities for their intended purposes. *U.S. Postal Service v. Greenburgh Civic Assns.* 453 U.S. 114, 132, 69 L.Ed.2d 517, 101 S. Ct. 2676 (1981). The Ninth Circuit obviously failed to recognize this important difference and chose to rely on its own earlier opinion in *Kuszynski v. Oakland,* 479 F.2d 1130 (1973).

Both the District Court and the Circuit Court seem to conclude that the two-page *Kuszynski* opinion requires a finding that the interiors of *all* airport terminals are public forums. Such a conclusion is clearly improper because *Kuszynski* involved the review of a time, place and manner restriction that, of course, is governed by a very different standard than is a decision to limit the uses of a government facility to its intended purposes. Regardless of this, however, the Ninth Circuit has concluded erroneously that these cases, and others involving an intentional opening of an airport facility or a review of a time, place and manner restriction,[1] require a finding that all airports are public forums.

---

[1]A summary examination of other airport cases dealing with First Amendment issues reveals that they are of little or no precedential value in deciding whether Airport is a public forum. *Rosen v. Port of Portland,* 641 F.2d 1243 (1981); *Fernandez v. Limmer,* 663 F.2d 619 (5th Cir. 1981); *ISKCON v. Eaves,* 601 F.2d 809 (5th Cir. 1979); *ISKCON v. Rochford,* 585 F.2d 263 (7th Cir. 1978), and *ISKCON v. Barber,* 650 F.2d 430 (2d Cir. 1981) involve the review of time, place and manner restrictions. *ISKCON v. Wolke,* 453 F. Supp. 869, 874 (D.C. Wis. 1978); *ISKCON v. Engelhardt,* 425 F. Supp. 176, 180

More importantly, both the District Court and the Ninth Circuit (as well as other courts deciding airport cases) cite *Kuszynski, supra,* at p. 113, for the proposition that: "[s]ince the airport is public property . . . free speech may be abridged only by regulations narrowly drawn to serve legitimate of the general public who use the airport" (App. A, p. A-9, App. B, p. B-5). *Kuszynski* has been repeatedly cited by various courts for that incorrect proposition. See, e.g., *Fernandez v. Limmer,* 663 F.2d 619, 626-627 (5th Cir., 1981). Such a conclusion is clearly incorrect. *City Council v. Taxpayers for Vincent, supra,* at p. 814 and fn. 31. *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d at p. 579-580.

The Ninth Circuit has now compounded its earlier mistake and has concluded essentially that, regardless of this Court's clearly stated First Amendment principles to the contrary, public ownership in and of itself creates a public forum. If this decision is permitted to stand, it will confuse and contradict the very clear positions taken by this Court in its recent decisions in *Cornelius v. N.A.A.C.P., U.S. v. Albertini,* and *Perry Ed. Assn. v. Perry Local Ed. Assn.,* among others, regarding the lawful uses of public facilities.

Petitioners in this case have exhibited a sensitivity to the First Amendment. They did not ban all First Amendment activities from the sidewalk areas of the Airport. In fact, Petitioners have specifically allowed First Amendment activities to be conducted on the sidewalk areas. Petitioners have also exhibited a concern that the facilities they control be used for their intended purposes and their intended purposes only. Such a determination is entirely reasonable and a proper exercise of their ability

---

(D.C. Wis. 1977); and *U.S.S.W. Africa/Namibia Trade and Cultural Council v. U.S.,* 708 F.2d 760 (D.C. Cir. 1983), dealt with places that were "opened" for expressive purposes.

to decide whether Airport property should be used for airport-related purposes or should be Hyde Parks dedicated to communicative purposes. If the courts are able to take away the ability of a government to limit its facilities to their intended purposes, all government-operated facilities, regardless of their intended purposes or dedication, may become mini-parks dedicated to the widest range of activities imaginable.

Because of the confusion in the lower courts regarding the propriety of the reservation of a government facility for its intended and dedicated purposes, Petitioners request that this Court resolve the significant and critical issues presented herein.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Writ of Certiorari be granted by this Court.

Respectfully submitted,

JAMES K. HAHN, City Attorney
JAMES H. PEARSON, Senior Assistant City Attorney
JAMES R. KAPEL, Assistant City Attorney
#1 World Way
Los Angeles, CA 90009
(213) 646-3260

By JAMES R. KAPEL
Attorneys for Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEWS FOR JESUS, a California non-profit religious corporation and ALAN HOWARD SNYDER a.k.a. AVI SNYDER, an individual,
Plaintiffs/Counter-defendants/Appellees,

vs.

THE BOARD OF AIRPORT COMMISSIONERS OF THE CITY OF LOS ANGELES; et al.,
Defendants/Counter-claimants/Appellants.

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding.

Argued and submitted January 17, 1986
San Francisco, California

No. 85-5808

D.C. No. CV 84-5268-ER

OPINION

Before: SNEED, ANDERSON, and ALARCON, Circuit Judges.
ALARCON, Circuit Judge.

Filed: March 25, 1986

Cathy A. Catterson, Clerk
U.S. Court of Appeals

Appellants Board of Airport Commissioners and City of Los Angeles appeal the district court's summary judg-

ment in favor of appellees Jews for Jesus, Inc. and Alan Snyder. The district court found that: (1) the Central Terminal Area at Los Angeles International Airport (the interiors of the eight passenger terminals) is a traditional public forum; and (2) Resolution 13787 which prohibits all First Amendment activities within the Central Terminal Area is unconstitutional on its face. The Board appeals primarily because it disagrees with the district court's finding that the Central Terminal Area is a public forum. We affirm.

I.

BACKGROUND

Plaintiffs and appellees (hereinafter Jews for Jesus) are Jews for Jesus, Inc., a non-profit religious corporation, and Alan Howard Snyder, a minister of the Gospel for Jews for Jesus. The defendants and appellants (hereinafter the Board) are the City of Los Angeles and the Board of Airport Commissioners of the City of Los Angeles, as individuals and as operator of Los Angeles International Airport (hereinafter LAX). The Board, pursuant to City of Los Angeles Charter § 238.4, manages and controls all airports owned by the City of Los Angeles including LAX.

On July 13, 1983, the Board adopted Resolution No. 13787 (hereinafter the Resolution) which states in part:

> NOW, THEREFORE BE IT RESOLVED by the Board of Airport Commissioners that the Central Terminal Area at Los Angeles International Airport is not open for First Amendment activities by any individual and/or entity;
>
> • • • •

> BE IT FURTHER RESOLVED that if any individual or entity engages in First Amendment activities within the Central Terminal Area at Los Angeles International Airport, the City Attorney of the City of Los Angeles is directed to institute appropriate litigation against such individual and/or entity to ensure compliance with this Policy statement of the Board of Airport Commissioners . . . .

On July 6, 1984, Snyder was distributing free religious literature on a pedestrian walkway in the Central Terminal Area (hereinafter CTA) at LAX when he was approached by a uniformed Department of Airports peace officer. The officer showed Snyder a copy of the Resolution, explained that Snyder was violating the Resolution, and asked Snyder to leave. The officer warned Snyder that if he refused to leave the City would take legal action against him. Snyder stopped distributing the leaflets and immediately left the airport terminal.

On July 17, 1984, Jews for Jesus filed suit in district court seeking a declaration of their rights to distribute religious literature in public areas in the CTA. Jews for Jesus challenged the constitutionality of the Resolution under both the Federal and California Constitutions on three grounds: (1) that it is unconstitutional on its face because it totally bans First Amendment activities in a public forum; (2) that the Resolution is unconstitutional as applied to plaintiffs because it has only been used to ban certain kinds of communicative conduct such as leafletting by Jews for Jesus; and (3) that it is unconstitutionally vague and overbroad because the term "First Amendment activities" does not give guidance to officials or the public as to what activity is prohibited.

The matter came before the district court for trial on January 6, 1985. Counsel for all parties orally stipulated to the facts and the district court treated the trial briefs

as cross-motions for summary judgment without objection from the parties. The district court ruled that the CTA is a traditional public forum, declared the total ban on First Amendment activities unconstitutional on its face, and declined to reach the other issues raised by Jews for Jesus.

II.

STANDARD OF REVIEW

Because the parties stipulated to the facts below, there are no factual issues on appeal. This court reviews *de novo* the district court's application of the law to the facts on free speech questions. *Carreras v. City of Anaheim,* 768 F.2d 1039, 1042 n.2 (9th Cir. 1985).

III.

DISCUSSION

The United States Supreme Court recently enunciated the proper analysis for a First Amendment issue. First, the court must decide whether the challenged activity or speech is protected by the First Amendment, for, if it is not, the court need go no further. *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.,* 105 S. Ct. 3439, 3446 (1985). If the speech is protected, the court must identify the nature of the forum, because the extent to which the government may limit access depends on whether the forum is public or nonpublic. *Cornelius,* 105 S. Ct. at 3446-47. Finally, the court must assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard. *Cornelius,* 105 S. Ct. at 3447.

The Board does not dispute that distribution of literature is a form of communication protected by the First

Amendment. *United States v. Grace,* 461 U.S. 171, 176 (1983); *Lovell v. Griffin,* 303 U.S. 444 (1938); *Rosen v. Port of Portland,* 641 F.2d 1243, 1245 (9th Cir. 1981). Both parties agree that the determinative legal issue in this case is whether the CTA is a public forum. That determination will provide the standard we must apply when reviewing the constitutionality of the Resolution.

Jews for Jesus argue that the central terminal areas in airports are traditional public forums open to free expression. The Board asserts that a traditional public forum analysis is inapplicable because the CTA at LAX is a nonpublic area which has not been opened to First Amendment expression by the Board. The Board contends that it has operated the terminal facilities solely for airport-related purposes and has neither created a forum for expressive purposes nor opened the area for the debate of issues of public interest unrelated to the airport's intended uses. The Board's reliance on recent Supreme Court decisions in *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37 (1983), and *Cornelius,* 105 S. Ct. 3439 is misplaced. These cases do not concern the determination of traditional public forums. They address the separate and distinct issue whether governmental facilities that are *not* traditional public forums have been *opened* for First Amendment activities. *See Perry Education Association,* 460 U.S. at 46 (interschool mail system is not a traditional public forum); *Cornelius,* 105 S. Ct. at 3450 (the Combined Federal Public Campaign literature is not a traditional public forum).

The Supreme Court recently described traditional public forums as "those places which 'by long tradition or by government fiat have been devoted to assembly and debate.' " *Cornelius,* 105 S. Ct. at 3449, *quoting Perry Education Association,* 460 U.S. at 45. "Public streets and

parks fall into this category." *Cornelius,* 105 S. Ct. at 3449. A principal purpose of traditional public forums is the free exchange of ideas. *Cornelius,* 105 S. Ct. at 3448. "In such places, the government's ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place, and manner regulations as long as the restrictions 'are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.' " *Grace,* 461 U.S. at 177, *quoting Perry Education Association,* 460 U.S. at 45. "Additional restrictions such as an absolute prohibition on a particular type of expression will be upheld only if narrowly drawn to accomplish a compelling governmental interest." *Grace,* 461 U.S. at 177.

This court, like a number of other circuits, has addressed the First Amendment forum issue in the context of airport terminals and concluded that airport terminal buildings are public forums open to First Amendment activity. In *Rosen v. Port of Portland,* 641 F.2d 1243 (9th Cir. 1981), the chairman of Jews for Jesus challenged an ordinance and implementing regulations enacted by the Port of Portland that required those persons seeking to "exercise . . . the fundamental constitutional right of free expression" at the Portland International Airport terminal to register in advance and identify their sponsor. *Id.* at 1245 & n.2. The district court upheld the ordinance and we reversed. We observed in *Rosen* that "[t]he first amendment is to be given full effect in the public areas of airport terminal buildings," *id.* at 1245, and held both the advance notice and the identification provisions of the ordinance unconstitutional. *Id.* at 1252.

In *Rosen* we relied on our earlier ruling in *Kuszynski v. City of Oakland,* 479 F.2d 1130 (9th Cir. 1973), and cited with approval a Seventh Circuit decision, *Chicago Area*

Military Project v. City of Chicago, 508 F.2d 921 (7th Cir.), *cert. denied,* 421 U.S. 992 (1975) (hereinafter *CAMP*). The ordinance challenged in *Kuszynski* provided that "[t]he use of the [Oakland] Airport for the purpose of exercising the right of free expression and communication . . . shall not be allowed to impair or interfere with the transportation function of the airport. The exercise of such rights shall be in accordance with [certain rules and regulations]." *Kuszynski,* 479 F.2d at 1130-31. Among other things, the regulations required the approval of the Oakland Airport manager before an exercise of First Amendment rights and limited leafletting to a period of four hours. In a brief opinion, we concluded: "Since the airport is public property . . . free speech may be abridged only by regulations narrowly drawn to serve legitimate interests of the general public who use the airport." *Kuszynski,* 479 F.2d at 1131. We found the ordinance invalid and ordered the district court to "enjoin the enforcement of those portions of the ordinance not found to be reasonably necessary for the management of the airport." *Id.*

The Seventh Circuit's decision in *CAMP,* 508 F.2d 921, contains an extensive analysis of the forum issue which we find persuasive. The court in *CAMP* rejected many of the same arguments now before this court and held that the publicly owned and operated O'Hare Airport could not flatly bar the distribution of leaflets in public areas inside the terminal buildings.

The City of Chicago in *CAMP* argued that it had not opened O'Hare to free speech activities. The City claimed "that the public receives a limited invitation to use O'Hare Airport for travel purposes only." *CAMP,* 508 F.2d at 925. The Seventh Circuit found that these contentions were neither "supported by the evidence" nor "realistic." *Id.* The court analogized the airport terminal to

traditional public forums and concluded the terminal was a public forum where First Amendment activity could not be totally banned.

> [T]he plaintiffs do not here claim any right to distribute leaflets on airplanes or in other privately owned or leased places but only in the spacious, city-owned common areas which resemble those public thoroughfares which have been long recognized to be particularly appropriate places for the exercise of constitutionally protected rights to communicate ideas and information.

Id., citing Hague v. CIO, 307 U.S. 496, 515-16 (1939).

More recent appellate decisions are in accord with the holdings in *Rosen, Kuszynski,* and *CAMP.* In *United States Southwest Africa/Nambia Trade & Cultural Council v. United States,* 708 F.2d 760 (D.C. Cir. 1983), the District of Columbia Circuit categorized the public areas of Washington National Airport (National) and Dulles International Airport (Dulles) as "public forums" for First Amendment purposes. *Id.* at 764. The District of Columbia Circuit quoted with approval the Seventh Circuit's analogy in *CAMP* of airport terminals to public thoroughfares. *Id.* The court also observed that "[w]hatever commonsense differences may exist in the forms of free speech allowable in airports, as opposed to parks and streets, an unusual consensus of judicial, legislative, and administrative opinion would classify the public areas of National and Dulles squarely within the public forum family." *United States Southwest Africa,* 708 F.2d at 766.

The Fifth Circuit similarly found the Dallas-Fort Worth Airport complex to be a public forum in *Fernandes v. Limmer,* 663 F.2d 619 (5th Cir. 1981). In response to Dallas-Fort Worth's claim that "the airport ought not be regarded as a public forum," the Fifth Circuit stated: "It

is now generally well established that airport terminals owned and administered by governmental entities are public forums in which efforts to regulate speech or religious activity must comport with First Amendment guarantees." *Id.* at 626. The *Fernandes* court concluded that "in view of the lack of restrictions on entry by the general public, and the commercial, street-like character of the terminal concourses . . . the [Dallas-Fort Worth] terminal buildings must be treated as public forums." *Id.* at 627. *See also Wolin v. Port of New York Authority,* 392 F.2d 83, 89 (2d Cir.) (the interior of the Bus Terminal operated by the New York Port Authority is traditionally a place for exercise of First Amendment rights), *cert. denied,* 393 U.S. 940 (1968).

Since *Rosen* and *Kuszynski,* the law of this circuit has been that an airport complex is a traditional public forum. Every circuit which has confronted the issue has reached the same conclusion. We hold that the Central Terminal Area at LAX is a traditional public forum.

Because the CTA is a traditional public forum, the Board's resolution banning all First Amendment activity can be upheld only if it was narrowly drawn to accomplish a compelling governmental interest. *Grace,* 461 U.S. at 177; *Cornelius,* 105 S. Ct. at 3448. The Board sets forth only one governmental interest to justify the total exclusion of First Amendment activity in the CTA: "The Los Angeles City Charter requires the Board to operate all of its properties for promotion and accommodation of air navigation and air commerce and uses incidental thereto." The Board has not shown that its desire to limit the uses of the terminal facilities to airport-related purposes is sufficiently compelling to justify the uniform and absolute prohibition on all First Amendment activity in the CTA. In fact, the parties stipulated that "[i]n distributing the religious literature [in the CTA], Snyder was

not blocking any entrance, exit, stairway, escalator, elevator, door, or otherwise inhibiting the free flow of pedestrian traffic [in the CTA]" and that "Snyder was not touching, annoying, blocking, obstructing, or otherwise harassing any other person present in the immediate vicinity of his location on the pedestrian walkway [in the CTA]." *See Fernandes,* 663 F.2d at 626 (that the passageways of the Dallas-Fort Worth Airport are crowded and narrow does not justify prohibiting Krishna followers from distributing literature and soliciting funds); *Wolin,* 392 F.2d at 91 (absolute prohibition of leafletting at the New York Port Authority's Bus Terminal cannot be defended on the ground that it would obstruct traffic).

The fact that the CTA is a traditional public forum does not preclude the Board from imposing restrictions on the distribution of leaflets. The Board is free to promulgate reasonable time, place, and manner restrictions on the distribution of literature in the CTA. *See Heffron v. International Society for Krishna Consciousness, Inc.,* 452 U.S. 640 (1981); *CAMP,* 508 F.2d at 926 (airport authorities may prohibit leafletting at check-in counters, arrival and departure gates, or any other areas where it is shown to substantially interfere with rapid and efficient airport operations). Because the 1983 resolution proscribes all First Amendment activity rather than setting forth reasonable time, place, and manner restrictions on such activity, it is unconstitutional on its face.

IV.

CONCLUSION

We hold that the distribution of literature by Jews for Jesus is protected speech and that the Central Terminal Area of the Los Angeles International Airport is a public forum. The governmental interests advanced by the Board are not sufficiently compelling to justify the total

exclusion of those persons wishing to exercise free speech within the CTA.

The Board has conceded that, in the event Jews for Jesus prevail in this litigation, they are entitled to recover their attorneys' fees pursuant to 42 U.S.C. § 1988. Since we have concluded that the Board's resolution is unconstitutional, Jews for Jesus are the prevailing parties and shall recover reasonable attorneys' fees as part of their costs. *See Hensley v. Eckerhart,* 461 U.S. 424 (1983); *Douglas v. City of Jeannette,* 319 U.S. 157, 162 (1943).

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEWS FOR JESUS, INC., a California non-profit religious corporation and ALAN HOWARD SNYDER, a.k.a. AVI SNYDER,
Plaintiffs,

v.

THE BOARD OF AIRPORT COMMISSIONERS OF THE CITY OF LOS ANGELES; JOHNNIE L. COCHRAN, JR., President of the Los Angeles Board of Airport Commissioners; ROBERT A. CHICK, Vice-President of the Los Angeles Board of Airport Commissioners; and D. A. "CURT" CURTISS, MARIA D. HUMMER, AND SAMUEL GREENBERG, Members of the Los Angeles Board of Airport Commissioners, the last five in their official and individual capacities; CITY OF LOS ANGELES, a municipal corporation,
Defendants.

No. CV 84-5268-ER
MEMORANDUM DECISION AND JUDGMENT

Filed: March 26, 1985 — Clerk, U.S. District Court Central District of California

Entered: March 29, 1985 — Clerk U.S. District Court Central District of California

The above captioned matter came before this Court for trial without a jury on January 8, 1985. Prior to trial the Court indicated to counsel its desire to treat the trial

briefs as cross motions for summary judgment. None of the parties planned to call witnesses at trial and counsel for all defendants orally stipulated to the facts stated in plaintiffs' Exhibit #1 ("Stipulated Facts for Trial"). As there were no genuine issues of material fact to be decided at trial and without objection from the parties, the oral argument was held as argument on cross motions for summary judgment on the constitutionality of Board of Airport Commissioners of the City of Los Angeles Resolution No. 13787.*

FACTS

Defendant Board of Airport Commissioners of the City of Los Angeles ("Board of Airport Commissioners"), pursuant to City of Los Angeles Charter § 238.4, manages and controls all airports owned by the City of Los Angeles including Los Angeles International Airport ("LAX").

On July 13, 1983 at a special meeting the Board of Airport Commissioners adopted Resolution No. 13787 ("the Resolution") which states in part:

> NOW, THEREFORE BE IT RESOLVED by the Board of Airport Commissioners that the Central Terminal Area at Los Angeles International Airport is not open for First Amendment activities by any individual and/or entity;
>
> * * * *
>
> BE IT FURTHER RESOLVED that if any individual or entity engages in First Amendment activities within the Central Terminal Area at Los Angeles

---

*The stipulated Facts for Trial and the text of Resolution No. 13787 are attached hereto as Appendix 1 and Appendix 2, respectively.

> International Airport, the City Attorney of the City of Los Angeles is directed to institute appropriate litigation against such individual and/or entity to ensure compliance with this Policy statement of the Board of Airport Commissioners;

Plaintiffs challenge the constitutionality of the Resolution on three grounds: (1) that it is unconstitutional on its face because it totally bans First Amendment activity in a public forum; (2) that the Resolution is unconstitutional as applied to plaintiffs because it only has been used to ban certain kinds of communicative conduct such as leafletting by plaintiffs; and (3) that it is unconstitutionally vague and overbroad because the term "First Amendment activities" does not give guidance to officials or the public as to what activity is prohibited. Finding the Resolution unconstitutional on its face, this Court does not reach the second and third challenges to the Resolution.

Plaintiffs are Jews for Jesus, a non-profit religious corporation, and Alan Howard Snyder, a minister of the Gospel for Jews for Jesus. On Friday, July 6, 1984 Snyder was distributing free religious literature at LAX when he was approached by a uniformed Department of Airports peace officer who showed Snyder a copy of the Resolution, explained that Snyder was in violation thereof, and asked Snyder to leave. The officer warned Snyder that if he refused to leave the City would take legal action against him. Snyder stopped distributing the leaflets and immediately left the airport terminal.

CONSTITUTIONALITY OF THE RESOLUTION

The First Amendment stops government from passing laws abridging the freedom of speech and the right of the people peaceably to assemble. *U.S. Const.* Amend. I. At least since 1939 it has been clear the government cannot

ban First Amendment activity totally in traditionally public places. First Amendment activities in such places are, however, subject to valid time, place and manner restrictions. *See e.g. Heffron v. International Society for Krishna Consciousness,* 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981). As the Supreme Court wrote in *Hague v. Committee for Industrial Organization,* 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939):

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. *The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all;* it is not absolute, but relative and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; *but it must not, in the guise of regulation, be abridged or denied.*

301 U.S. at 964, 59 S.Ct. at 515-16 (emphasis added).

The resolution being challenged by plaintiffs here completely bans First Amendment activity in the Central Terminal of LAX and therefore must be struck down if the Central Terminal is a public forum like the streets and parks discussed in *Hague.* The question then facing the Court is whether a municipally owned and operated airport terminal is a public forum. The question is easily answered. Numerous appellate opinions have held that airport terminals are public forums. *Kuszynski v. City of Oakland,* 479 F.2d 1131 (9th Cir. 1973) is the seminal case on the subject. The ordinance challenged and struck

down in *Kuszynski* provided that "The use of the Airport for the purpose of exercising free expression and communication . . . shall not be allowed to impair or interfere with the transportation function of the airport. The exercise of such rights shall be in accordance with [certain rules and regulations]." Among other things, the regulations required approval of the airport manager before an exercise of First Amendment rights and limited leafleting to four hours. In a brief opinion the court concluded, "Since the airport is public property . . . free speech may be abridged only by regulations narrowly drawn to serve legitimate interests of the general public who use the airport." *Id.* at 1131. The court found the ordinance invalid because there was no showing that the restrictions were reasonable. The court ordered the district court to "enjoin the enforcement of those portions of the ordinance not found to be reasonably necessary to airport management." *Id.*

This Court need go no further in analyzing the Board of Airport Commissioner's case. It is obvious from the one page opinion of the Ninth Circuit in *Kuszynski* that airports are public forums. While it belabors the obvious to address the question further, the Court will briefly discuss other precedents supportive of plaintiffs' argument.

In *Rosen v. Port of Portland,* 641 F.2d 1243 (9th Cir. 1981) the Ninth Circuit wrote: "The first amendment is to be given full effect in public areas of airport terminal buildings . . . . However, the regulation of activity that interferes with the normal use of an airport facility is a proper governmental function." *Id.* at 1245-46. In *Rosen* the appellate court reversed a district court and found the restrictions imposed by the Port of Portland were unconstitutional. "Both the advance notice and the identification provisions of the challenged ordinance violate the

United States Constitution . . . . persons desiring to exercise their free speech rights may not be required to give advance notice and to identify themselves and their sponsors to Port authorities." *Id.* at 1252. It is obvious that if Portland cannot require advance notice by and identification of leafleters, Los Angeles cannot ban them all together. LAX is a public forum and the challenged Resolution is unconstitutional. *Accord S.W. Africa/Namibia Trade & Cult. Coun. v. U.S.,* 708 F.2d 760 (D.C. Cir. 1983) (National and Dulles airports public forums); *Fernandes v. Limmer,* 663 F.2d 619 (5th Cir. 1981) (Dallas-Fort Worth Airport a public forum). In *Chicago Area Military Project v. City of Chicago,* 508 F.2d 921 (7th Cir. 1975) the City of Chicago claimed "that the public receives a limited invitation to use O'Hare Airport for travel purposes only" but the 7th Circuit found that argument was neither supported by the evidence nor . . . realistic" and held that O'Hare Airport is a public forum. 508 F.2d at 925. The City of Los Angeles makes the same claim as the City of Chicago did. It is no more persuasive in 1985 than it was in 1975.

When asked what makes LAX, the third busiest airport in the world, different from National, Dulles, Dallas-Fort Worth and O'Hare airports, defendants' counsel stated that those airports chose to be public forums by enacting time, place, and manner restrictions and LAX did not. This argument, while creative, is supported neither by fact nor law.

As a factual matter, the City has stipulated that "a variety of religious and/or political groups have utilized the interior area of terminals at LAX, including the pedestrian walkways located therein, to distribute literature, solicit funds, and communicate ideas." The City further stipulated that "the interior of terminal areas at LAX, including the pedestrian walkways located therein,

have been utilized on a number of occasions by print, television and radio media for the purpose of filming, photographing and/or interviewing public figures." The City also stipulated to other uses of LAX for non-travel related matters. *See* Appendix 1.

More importantly, the contention that an airport is not a public forum unless the City consents to it being such is without legal support. A similar argument was rejected by the Second Circuit when it faced the question "May the Port of New York Authority bar the use of its terminal to all exercises of First Amendment rights?" *Wolin v. Port of New York Authority,* 392 F.2d 83 (2nd Cir. 1968). The answer was no for the Port Authority and it is no for the Board of Airport Commissioners. Streets, parks and airports do not become public forums because government consents to their use as such. They are public forums, as the Supreme Court explained in *Hague,* because they are traditional gathering places for the citizenry. They are held in trust by government for public use.

In recent years the Supreme Court has grappled with difficult questions of what constitutes a public forum. *E.g., Members of City Council v. Taxpayers for Vincent,* ____ U.S. ____ 104 S.Ct. 2118 (1984) (lamposts); *U.S. Postal Service v. Council of Greenburgh,* 453 U.S. 114, 101 S.Ct. 2676 (1981) (mailboxes). Despite the difficulty in applying public forum analysis to all government property "generally an analysis of whether property is a public forum provides a workable analytical tool." *Members of City Council v. Taxpayers for Vincent,* 104 S.Ct. at 2134 n. 32. Public forum analysis is a workable tool here. This is not a difficult case. An airport used by an estimated 60 million people a year is a public forum. First amendment activity cannot be banned at LAX. Resolution No. 13787

is unconstitutional. Defendants are enjoined from enforcing it.

Judgment is entered for plaintiffs.

DATED: March 25, 1985.

EDWARD RAFEEDIE
United States District Judge

APPENDIX 1

STIPULATION OF FACTS

1. The City of Los Angeles ("City") is a municipal corporation and is the owner of the real property and facilities commonly known as Los Angeles International Airport (hereinafter "LAX").

2. The Board of Airport Commissioners of the City of Los Angeles (hereinafter "Board" is charged by the Los Angeles City Charter with the management and control of the Los Angeles Department of Airports (hereinafter "Department").

3. The Department is a department of the City and operates LAX under the direction and control of the Board.

4. The LAX complex encompasses approximately 3500 acres consisting of three general areas: (A) the restricted or "field side" area containing runways, taxiways, airline maintenance and cargo facilities, aircraft loading ramps, and various aircraft service facilities; (B) Airport-owned property surrounding the restricted area; and (C) the Central Terminal Area (hereinafter "CTA") which contains the terminal facilities (ticketing counter, baggage claim, waiting and loading gates), parking structures, and a series of private streets and roadways which provide vehicular access to the CTA. There are presently eight (8) terminal buildings open to the public for Airport use at LAX. Each of these eight (8) terminal facilities contain large areas open to the public, including the pedestrian walkways, ticketing and baggage claim areas, baggage lockers, check-in gates, loading gates, cocktail lounges, waiting areas, aircraft loading gates, restaurants, newsstands, gift shops, barber shops, art displays (see paragraph 28), information displays, flight insurance counters, rent-a-car counters, hotel, motel, restaurant and ground transportation advertising displays,

rest areas, including chairs and benches, restrooms, automatic travellers check and banking machines and general waiting areas. Most of these terminal facilities have offices for Airport tenants which are generally not open to the public.

5. The public is permitted unrestricted access to the portions of the airport terminal interiors identified in Paragraph 4(C), above.

6. As a part of the expansion program at LAX, a second level roadway system has been constructed which essentially duplicated the existing roadway system by creating an upper level, or second level, roadway system above the surface roads. This second level roadway system was designed to alleviate, at least in part, the vehicular and pedestrian congestion at LAX.

7. As a part of the expansion program, each of the terminal facilities was expanded (or is presently being expanded) to provide access to those facilities from the upper level roadway. Thus, a passenger departing from LAX generally arrives on the upper level roadway, enters the terminal facility and proceeds after any necessary ticketing and baggage check-in to the waiting areas and terminal gates. A passenger arriving at LAX by air disembarks from the aircraft and proceeds, at least in most terminals, on a lower level tunnel to the baggage claim area and then out of the terminal on to the sidewalk and to any required ground transportation.

8. The planned expansion and construction project at LAX has recently been substantially completed. This expansion of existing terminals and construction of new terminals at LAX has had the effect of reducing the levels of pedestrian and vehicular congestion both inside and outside of the terminal complexes to levels below those

which existed prior to the commencement of the expansion and construction project.

9. In front of the terminal facilities on both levels of the roadway are sidewalks which extend approximately twelve (12) to sixteen (16) feet from the terminal entrance.

10. LAX is the third busiest airport in the world. LAX handled more than 32 million passengers in 1982, more than 33 million passengers in 1983, and it is anticipated will handle more than 34 million passengers in 1984. It is estimated that at least an equal number of "meeters and greeters" enter the CTA to pick up or drop off airline passengers.

11. LAX is the largest destinational airport in the world with the largest number of enplaning and deplaning passengers.

12. Approximately 75 percent of the passengers who use LAX commence or terminate their flight travel at LAX.

13. Approximately 25 percent of the passengers who use LAX do not commence or terminate their flight travel at LAX.

14. Because approximately 75 percent of the passengers either commence or terminate their flight travel at LAX, at least 75 percent of the passengers must use the sidewalk area in front of the terminal facilities.

15. Because approximately 25 percent of the passengers do not either commence or terminate their flight travel at LAX, at least 25 percent of the passengers do not use the sidewalk area in front of the terminal facilities.

16. Article XXIV, section 238.8 of the Los Angeles City Charter provides as follows:

The Board shall have power to grant franchises, permits and licenses to, and to enter into leases with, any person, firm or corporation, or agency of the government for the use of any municipally owned or controlled airport or any part of facility thereof, for the promotion and accommodation of air commerce and air navigation, or use incidental thereto, together with the right to use said airport in common with others as necessary to the right granted. (Amended, 1951.)

The Board shall likewise have power to enter into leases with any person, firm or corporation for purposes other than for the promotion and accommodation of air commerce and air navigation covering any portion of the airport property whenever the Board shall determine that the use of such portion of the Airport property is not necessary for the promotion and accommodation of air commerce and air navigation or use incidental thereto.

17. Article XXIV, section 239.5 of the Los Angeles Charter provides as follows:

Whenever it shall be determined by the Board by order that certain parts of any airport owned, operated or controlled by the city may not be required at such time for use in connection with, or for the promotion and accommodation of air commerce and air navigation, the general manager shall have power to issue revocable permits to use limited portions of such space for any and all purposes which shall not interfere with air commerce or air navigation and not inconsistent with any trust upon which such land may be held by the City of Los Angeles. Every such permit shall first be approved by the Board and shall prescribe that it shall be revocable, without compensation to the lessee or permittee, upon due notice to

be stated therein, such notice in no case to exceed one year.

18. For the use of the terminal facilities, the Department has entered into permits, license agreements, leases, and concession agreements to provide food and beverage service, news and gift facilities, flight insurance, money exchange facilities, ground transportation, waiting areas, ticket counters, lockers, and baggage facilities.

19. The Defendants believe that the services and facilities that the Department has permitted within the terminal facilities at LAX are designed to aid the traveling public and to promote and accommodate air commerce and navigation.

20. The Department has attempted to limit the use of the terminal facilities to those uses which it believes directly aid the traveling public and thereby promote and accommodate air commerce and air navigation.

21. In the Department's opinion, it has never given a license permit or lease which allows any non-airport related commercial use of the terminal facilities.

22. During at least the past ten (10) years, a variety of religious and/or political groups have utilized the interior area of terminals at LAX, including the pedestrian walkways located therein, to distribute literature, solicit funds, and communicate ideas.

23. Defendants are or have been aware that a variety of religious and/or political groups have conducted distribution, solictation, or communication activities at LAX without the express or implied permission of the Board or D.O.A.

24. As to the activities described in Paragraphs 22 and 23, above, defendants often became aware of many of the groups engaging in those activities only after the

group had conducted its activity and had left the terminal facilities.

25. The interior of terminal areas at LAX, including the pedestrian walkways located therein, have been utilized on a number of occasions by print, television and radio media for the purpose of filming, photographing and/or interviewing public figures, such as political candidates, the Mayor of Los Angeles, and the chairman of the Los Angeles Olympic Organizing Committee. On several occasions, numerous individuals and news media personnel have gathered inside the terminal facilities at LAX to greet some of the sports teams that were returning from road games.

26. Defendants have obtained knowledge of some of the activities described in Paragraph 25 above, but often that knowledge was obtained after the event occurred.

27. A picture of the Mayor of the City of Los Angeles is displayed in each of the terminals at LAX on a sign that states "Mayor Tom Bradley Salutes the New LAX — Gateway to the Olympics."

28. Artwork created by children that depicts airport scenes has been displayed in the terminal facilities with the express knowledge and permission of the defendants.

29. A display entitled "Think Before You Buy", containing specimens, pictures, and information pertaining to protected species, has been constructed and maintained inside terminal 2 at LAX with the express knowledge and permission of defendants. The text of this display reads as follows:

> This exhibit was designed and installed by the Natural History Museum of Los Angeles County in cooperation with the Los Angeles City Attorney's Office, U.S. Fish and Wildlife Service, National Marine Fisheries Service and the Los Angeles Department

of Airports. Major assistance and funding was provided by TRAFFIC (U.S.A.) — Trade Records Analysis of Flora and Fauna in Commerce — a scientific, fact-finding program of World Wildlife Fund — U.S. monitoring the international trade in wild animals and plants.

30. A photographic display depicting photographs of various athletes was constructed and maintained inside terminal 7 at LAX for approximately two (2) to three (3) weeks in 1984 without the express knowledge and permission of defendants. The text of this display reads as follows:

> Photographs of America's Olympic Hopefuls. Sponsored by the Shooting for the Gold Foundation with a grant from Fuji Photo Film U.S.A. Inc.

31. The defendants have not restricted access by members of the general public to the interior of terminal areas at LAX to only those persons who are engaged in the use of the LAX facilities for interstate travel or for purposes of meeting or greeting airline passengers. The defendants do not attempt to restrict members of the general public from walking through the unrestricted interior of terminal areas at LAX. Defendants do not attempt to restrict members of the general public who have no purpose or desire to utilize the transportation-related facilities within the terminal areas at LAX from walking, reading, shopping, eating, drinking, and conversing with other members of the general public in the interior of terminal areas at LAX.

32. The defendants have not in the past, and do not in the present, prohibit persons wearing T-shirts or other articles of clothing imprinted with slogans, statements, or other forms of religious or political communication from walking in the interior terminal areas of LAX.

33. The defendants have expressly allowed the exercise of commercial speech in the interior of terminal areas of LAX, including areas directly attached to or in the vicinity of the pedestrian walkways located therein, in the form of advertising displays in connection with hotel, motel, restaurant, ground transportation and other services offered by commercial vendors which the defendants believe are of interest to the traveling public.

34. The expansion of LAX has been advertised on buses owned and/or operated by the Southern California Rapid Transit District and on buses owned or operated by the D.O.A. The defendants were aware of this advertising but did not exercise their right to prohibit it.

35. The defendants have promoted the new facilities at LAX through press releases to print, television and radio media and through the purchase of radio advertising.

36. Immediately prior to, and during the 1984 summer Olympic Games in Los Angeles, free standing "Olympic Family" booths were set up by the LAOOC with the express consent of the defendants within the terminal areas at LAX. The purpose of the booths was to provide information to athletes and/or other Olympic officials who were members of the "Olympic Family." Upon request, personnel working in said booths provided general information to members of the general public.

37. On approximately July 25, 1984, television crews filmed a demonstration of the operation of a Mobile Emergency Rescue Vehicle (MERV) inside a terminal at LAX for subsequent broadcast to the public on commercial television networks. MERV is part of the medical response program provided by defendants at LAX.

38. Defendants have known that various people and groups have wished to conduct and, in some instances,

have conducted speech-related activities within the terminal areas at LAX.

39. The activities described in Paragraph 38, above, were conducted against the wishes and policies of defendants and without the express permission of defendants.

40. The Department has never given the Plaintiffs, or any of them, explicit permission to distribute free religious literature within the terminal facilities at LAX.

41. The Plaintiffs, and each of them, have distributed free religious literature within the terminal facilities at LAX during the past ten years.

42. In the past, the Department has received a variety of requests from people in numerous organizations who wish to conduct activities which defendants believed were non-airport related, including First Amendment activities, within the terminal facilities at LAX. Examples of organizations which have requested, but have been denied, permission to u[illegible]he terminal facilities are: The Red Cross, Salvation Army, Girl Scouts, Boy Scouts, Ford Motor Company, Iran Relief Fund, Hunger Campaign, KCET, Women's Sports Foundation, and Verdi Restorante.

43. The Department has denied the requests referred to in paragraph 42 to conduct First Amendment activities within the terminal facilities and has thus precluded those activities from taking place within the terminal areas of LAX.

44. The Department is a department of the City and is financially self-sufficient and does not rely on or use tax revenues to finance its operations.

45. The monies necessary to pay for the operation and the development of LAX are collected from all persons

using or occupying LAX on a consistent and regular basis.

46. Individual members of the traveling public and other members of the general public who enter and/or utilize the interior terminal areas at LAX are not charged any fee by the Department for their use of the terminal facilities.

47. Most persons occupying space on an extended basis within the terminal facilities pay either a rental based on the square feet occupied or a percentage of gross revenues derived from the use of that space or both. For example, the concession agreements and leases with the rent-a-car companies require that those companies pay a rent for the space occupied inside their terminal facilities and also a percentage of gross receipts in order to conduct their business at LAX. The news and gift stands and the food and beverage stands within the terminal facilities pay both rent and a percentage of gross receipts on a similar basis. Air carriers also pay a square-footage rental based on the area they occupy within the terminal facilities for ticket counters, baggage claim areas, waiting areas, and loading gates. In addition, air carriers pay a landing fee based on the weight of the aircraft which land at LAX.

48. The only exceptions to the policy set forth in paragraph 47 above are: (a) the various federal inspection services such as customs and immigration; (b) the Travelers Aid Society which provides information services to the traveling public; and (c) the USO which provides assistance to military travelers.

49. The monies collected from rents, concession fees, permit charges and landing fees described in paragraph 47 above pay for the Department's bonded indebtedness and the expenses necessary to operate LAX.

50. The Board has attempted to limit use of the terminal facilities at LAX to those activities which it believes directly aid the traveling public.

51. The Board has not expressly permitted any commercial or First Amendment activities within the CTA which defendant believes are unrelated to LAX and the services it provides.

52. On July 13, 1983, the Board passed Resolution No. 13787.

53. The only exception to the rules set forth in Resolution No. 13787 provides that anyone wishing to exercise his First Amendment rights within the CTA must do so on the sidewalks outside of and in front of the terminal buildings.

54. Resolution No. 13787 does not prohibit, and the defendants have never prohibited, anyone from entering the terminal facilities at LAX.

55. Jews for Jesus, Inc. ("Jews for Jesus") is a nonprofit religious corporation duly organized and operating pursuant to, the laws of the state of California.

56. Jews for Jesus is an expression of the Christian faith which, as one of its principle purposes, preaches the Gospel of Jesus Christ, and promotes religious ideals consistent with the Old Testament and the New Testament.

57. Avi Snyder ("Snyder") is an individual member and minister of Jews for Jesus and is the Los Angeles director of Jews for Jesus.

58. The acts and practices of all of the named defendants and their agents, as described herein, were performed under color of state law and were actions of the state within the meaning of 42 U.S.C. § 1983 and Fourteenth Amendment to the United States Constitution.

59. Snyder, and other members of the plaintiff Jews for Jesus, have on several occasions distributed literature inside the terminal facilities at LAX.

60. Distribution of religious literature and leaflets, free of charge by members of Jews for Jesus, including Snyder, provides information to the general public about the religious teachings of Christianity and is a method by which plaintiffs evangelize.

61. It is the express policy of Jews for Jesus that its members, including Snyder, must neither solicit nor accept, any money whatsoever, while distributing free religious literature in the terminal buildings of LAX.

62. Jews for Jesus has a general policy which forbids its members, including Snyder, while engaged in the free distribution of religious literature at any location, including the interior terminal walkways of LAX, from harassing, interfering with, blocking, obstructing, physically touching or otherwise intentionally annoying any other person.

63. The parties are not aware of any occasion on which a member of Jews for Jesus, including Snyder, while engaged in the free distribution of religious literature in the interior terminal walkways of LAX, has intentionally harassed, interfered with, blocked, obstructed, physically touched in an offensive manner or otherwise intentionally annoyed any other person.

64. Only July 13, 1983, the Board, acting pursuant to authority vested in it by City, enacted Resolution No. 13787. This resolution, on its face, bans, among other things, all "First Amendment activities" from the interior of terminal areas at LAX otherwise open to the public without restriction, including the pedestrian walkways located within said terminals.

65. Resolution No. 13787 purports to ban all airport activities which defendants believe to be non-airport related.

66. Resolution No. 13787 allows the conduct of First Amendment activities on the sidewalks immediately outside of the terminals located at LAX.

67. Only July 6, 1984, at approximately 10:00 a.m. in LAX Terminal 4, Snyder was engaged in the distribution of Jews for Jesus religious literature on a pedestrian walkway. In distributing the religious literature, Snyder was not blocking any entrance, exit, stairway, escalator, elevator, door, or otherwise inhibiting the free flow of pedestrian traffic on the pedestrian walkway located inside Terminal 4 at LAX.

68. During the distribution of free religious literature as described in Paragraph 67, Snyder was not touching, annoying blocking, obstructing, or otherwise harassing any other person present in the immediate vicinity of his location on the pedestrian walkway located in the interior of Terminal 4 at LAX.

69. At or about the time that Snyder was engaged in the activities described in Paragraph 67 and 68, above, a uniformed peace officer, acting pursuant to Resolution 13787, approached Snyder and handed him a copy of Resolution 13787. Pursuant to the policy of the defendants as reflected in the Resolution, the peace officer ordered Snyder to cease distribution of any literature within the terminal areas at LAX, including the pedestrian walkways where the activities had, up to that point, been conducted. The peace officer further advised Snyder that any failure to comply with his order would subject Snyder to legal action by the City Attorney pursuant to the express terms of Resolution No. 13787. Snyder ceased

the distribution of literature and left the interior terminal in compliance with the order of the peace officer.

70. The acts of the peace officer as described in Pargraph 69, above, were performed under color of state law pursuant to the express policy of the Board as set forth in Resolution No. 13787 had the purpose and effect of preventing Snyder from engaging in the distribution of free religious literature anywhere inside the LAX terminal buildings, including the pedestrian walkway where he had been engaged in the distribution of free religious literature.

71. Defendants have prevented and/or chilled, (and will continue to prevent and/or chill) plaintiffs' distribution of free religious literature inside the terminal areas at LAX pursuant to upon Resolution No. 13787.

72. If, as the plaintiffs contend, Resolution No. 13787 is unconstitutional on its face or as applied to plaintiffs' activities inside of the terminal areas at LAX, then plaintiffs have suffered, are suffering, and will continue to suffer irreparable harm.

73. If, as the plantiffs contend, Resolution No. 13787 is unconstitutional on its face or is applied to plaintiffs' activities, plaintiffs have no plain, speedy, speedy or adequate remedy at law to addresss said constitutional violations and any of the remedies to which plaintiff could be relegated would be attended by such uncertainties and delays that they would cause further irreparable damages, injury and inconvenience to plaintiffs. Damages are not adequate to protect plaintiffs from the continuing injury which would arise from said constitutional violations.

74. Defendants permit the operation of a Christian Science Reading Room inside terminal 7. This Reading Room is open to the public. The Reading Room displays

religious literature pertaining to the Christian Science faith. The Reading room has been in operation in the same location inside of the terminal building since 1966. The Reading Room has occupied and now occupies leased space for which it pays a monthly rental of $510.00.

APPENDIX 2

RESOLUTION NO. 13787

WHEREAS, pursuant to City of Los Angeles Charter Section 238.4, the Board of Airport Commissioners shall have possession, management, charge, superintendence and control of all airports, airport sites, and all equipment, accommodations and facilities for aerial navigation, flight, instruction and commerce belonging to or pertaining to this city; and

WHEREAS, pursuant to Charter Section 238.5, the Board shall fix, regulate and collect rates or charges for the use of all buildings, grounds, facilities, utilities and structures which are owned, controlled or operated by the city in connection with or for the promotion or accommodation of air commerce and air navigation, and for services in connection therewith; and

WHEREAS, pursuant to Charter Section 238.8, the Board shall have the power to grant franchises, permits and licenses to and to enter into leases with any person, firm or corporation, or agency of the government for the use of any municipally owned or controlled airport or any part of facility thereof, for the promotion and accommodation of air commerce and air navigation or use incidental thereto; and

WHEREAS, also pursuant to Section 238.8 of the City Charter, the Board shall have the power to enter into leases for purposes other than for the promotion and accommodation of air commerce and air navigation covering any portion of the airport property whenever the Board shall determine that the use of such portion of the airport property is not necessary for the promotion and accommodation of air commerce and air navigation or uses incidental thereto; and

WHEREAS, the Board considers the Central Terminal Area, which for purposes of this Resolution consists of

the ticketing and satellite facilities and the parking structures and areas and streets, roadways and bridges adjacent thereto at Los Angeles International Airport to be vital facilities for the promotion and accommodation of air commerce and air navigation and uses incidental thereto; and

WHEREAS, the existing Central Terminal Area at Los Angeles International Airport currently accommodates and processes approximately 34 million annual passengers and an equal number of meeters and greeters; and

WHEREAS, the Board of Airport Commissioners is currently engaged in an expansion program of Central Terminal Area at Los Angeles International Airport due to the extreme congestion in the Central Terminal Area; and

WHEREAS, the projected growth of air passenger traffic at Los Angeles International Airport is anticipated to reach a level of 40 million annual passengers by the year 1986; and

WHEREAS, the primary purpose of expanding the Central Terminal Area at Los Angeles International Airport is to accommodate more efficiently the traveling public at Los Angeles International Airport and to enhance the promotion and accommodation of air commerce and air navigation or uses incidental thereto; and

WHEREAS, even with the expanded Central Terminal Area at Los Angeles International Airport said facilities will continue to experience high periods of passenger traffic and congestion; and

WHEREAS, it is the objective of the Board of Airport Commissioners to keep the Central Terminal Area as free as possible from congestion and obstructions as an aid to the traveling public and in the promotion of air commerce and air navigation and uses incidental thereto; and

WHEREAS, in recognition of its Charter duty to accommodate and promote air commerce and air navigation and uses incidental thereto, the Board of Airport Commissioners determines that due to the vital nature of the Central Terminal Area, no portion thereof should be utilized for a purpose not connected with the promotion and accommodation of air commerce and air navigation and uses incidental thereto; and

WHEREAS, over the past several years, various individuals and/or entities have attempted to engage in First Amendment activities within the Central Terminal Area; and

WHEREAS, said individuals and/or entities engaging in such First Amendment activities have significantly interfered with the free flow of passenger traffic in the Central Terminal Area at Los Angeles International Airport and substantially contributed to the congestion in said Central Terminal Area; and

WHEREAS, such interference with passenger traffic and congestion caused by First Amendment activities in the Central Terminal Area are counterproductive to the objectives of the Board in accommodating air commerce and air navigation or uses incidental thereto; and

WHEREAS, engaging in First Amendment activities in the Central Terminal Area at Los Angeles International Airport is incompatible with the character and function of said Central Terminal Area; and

WHEREAS, the Board of Airport Commissioners does not issue permits at Los Angeles International Airport to individuals and/or entities to engage in First Amendment activities within the Central Terminal Area at Los Angeles International Airport; and

WHEREAS, over the years, the various individuals and/or entities which have engaged in First Amendment

activities within the Central Terminal Area at Los Angeles International Airport have done so without the consent or approval of the Board of Airport Commissioners; and

WHEREAS, extensive litigation involving various city ordinances and state statutes has not resolved the issue of whether the Central Terminal Area at Los Angeles International Airport constitutes an area which is open for the conduct of First Amendment activities; and

WHEREAS, the Board of Airport Commissioners, irrespective of the extensive litigation involving First Amendment activities at Los Angeles International Airport, has never opened the Central Terminal Area at Los Angeles International Airport to First Amendment activities; and

WHEREAS, in the prudent management of Los Angeles International Airport and in order to avoid congestion and interference with the promotion and accommodation of air commerce and air navigation and uses incidental thereto and in order to protect passengers in the Central Terminal Area from unwanted or disruptive intrusions, the Board of Airport Commissioners herein determines that the Central Terminal Area of Los Angeles International Airport is not open to individuals or entities engaging in First Amendment activities; and

WHEREAS, if any entity and/or individual seeks to engage in First Amendment activities in the vicinity of the Central Terminal Area, those activities must be conducted only on the sidewalks in front of the ticketing buildings and in such a manner so as not to interfere with other persons; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Airport Commissioners that the Central Terminal Area at Los Angeles International Airport is not open for First Amendment activities by any individual and/or entity;

BE IT FURTHER RESOLVED that the Central Terminal Area at Los Angeles International Airport is only to be used for the promotion and accommodation of air commerce and air navigation or uses incidental thereto unless the Board of Airport Commissioners makes the appropriate findings pursuant to Charter Section 238.8 that a portion of said area is not currently required for the promotion or accommodation of air navigation or uses incidental thereto; and

BE IT FURTHER RESOLVED that after the effective date of this Resolution, if any individual and/or entity seeks to engage in First Amendment activities within the Central Terminal Area at Los Angeles International Airport, said individual and/or entity shall be deemed to be acting in contravention of the stated policy of the Board of Airport Commissioners in reference to the uses permitted within the Central Terminal Area at Los Angeles International Airport; and

BE IT FURTHER RESOLVED that if any individual or entity engages in First Amendment activities within the Central Terminal at Los Angeles International Airport, the City Attorney of the City of Los Angeles is directed to institute appropriate litigation against such individual and/or entity to ensure compliance with this Policy statement of the Board of Airport Commissioners; and

BE IT FURTHER RESOLVED if any entity or individual seeks to engage in First Amendment activities in the vicinity of the Central Terminal Area, those activities must be conducted only on the sidewalks in front of the ticketing buildings and in such manner so as to not interfere with other persons; and

BE IT FURTHER RESOLVED that Department management is directed to monitor the conduct of any First Amendment activities on the sidewalks in front of the

ticketing buildings and report periodically to the Board regarding such activities in order for the Board to ascertain whether any restrictions should be implemented concerning said activities; and

BE IT FURTHER RESOLVED that this action, a general policy procedure, is exempt from the requirements of the California Environmental Quality Act as provided by Article III, Section 2.n. of the Los Angeles City CEQA Guidelines.

I hereby certify that the foregoing is a true and correct copy of Resolution No. 13787 adopted by the Board of Airport Commissioners at a special meeting held Wednesday, July 13, 1983.

ELAINE E. STANIEC — Secretary
Board of Airport Commissioners

APPENDIX C

RESOLUTION NO. 13787

WHEREAS, pursuant to City of Los Angeles Charter Section 238.4, the Board of Airport Commissioners shall have possession, management, charge, superintendence and control of ail airports, airport sites, and all equipment, accommodations and facilities for aerial navigation, flight, instruction and commerce belonging to or pertaining to this city; and

WHEREAS, pursuant to Charter Section 238.5, the Board shall fix, regulate and collect rates or charges for the use of all buildings, grounds, facilities, utilities and structures which are owned, controlled or operated by the city in connection with or for the promotion or accommodation of air commerce and air navigation; and for services in connection therewith; and

WHEREAS, pursuant to Charter Section 238.8, the Board shall have the power to grant franchises, permits and licenses to and to enter into leases with any person, firm or corporation, or agency of the government for the use of any municipally owned or controlled airport or any part of facility thereof, for the promotion and accommodation of air commerce and air navigation or use incidental thereto; and

WHEREAS, also pursuant to Section 238.8 of the City Charter, the Board shall have the power to enter into leases for purposes other than for the promotion and accommodation of air commerce and air navigation covering any portion of the airport property whenever the Board shall determine that the use of such portion of the airport property is not necessary for the promotion and accommodation of air commerce and air navigation or uses incidental thereto; and

WHEREAS, the Board considers the Central Terminal Area, which for purposes of this Resolution consists of

the ticketing and satellite facilities and the parking structures and areas and streets, roadways and bridges adjacent thereto at Los Angeles International Airport to be vital facilities for the promotion and accommodation of air commerce and air navigation and uses incidental thereto; and

WHEREAS, the existing Central Terminal Area at Los Angeles International Airport currently accommodates and processes approximately 34 million annual passengers and an equal number of meeters and greeters; and

WHEREAS, the Board of Airport Commissioners is currently engaged in an expansion program of Central Terminal Area at Los Angeles International Airport due to the extreme congestion in the Central Terminal Area; and

WHEREAS, the projected growth of air passenger traffic at Los Angeles International Airport is anticipated to reach a level of 40 million annual passengers by the year 1986; and

WHEREAS, the primary purpose of expanding the Central Terminal Area at Los Angeles International Airport is to accommodate more efficiently the traveling public at Los Angeles International Airport and to enhance the promotion and accommodation of air commerce and air navigation or uses incidental thereto; and

WHEREAS, even with the expanded Central Terminal Area at Los Angeles International Airport said facilities will continue to experience high periods of passenger traffic and congestion; and

WHEREAS, it is the objective of the Board of Airport Commissioners to keep the Central Terminal Area as free as possible from congestion and obstructions as an aid to the traveling public and in the promotion of air commerce and air navigation and uses incidental thereto; and

WHEREAS, in recognition of its Charter duty to accommodate and promote air commerce and air navigation and uses incidental thereto, the Board of Airport Commissioners determines that due to the vital nature of the Central Terminal Area, no portion thereof should be utilized for a purpose not connected with the promotion and accommodation of air commerce and air navigation and uses incidental thereto; and

WHEREAS, over the past several years, various individuals and/or entities have attempted to engage in First Amendment activities within the Central Terminal Area; and

WHEREAS, said individuals and/or entities engaging in such First Amendment activities have significantly interfered with the free flow of passenger traffic in the Central Terminal Area at Los Angeles International Airport and substantially contributed to the congestion in said Central Terminal Area; and

WHEREAS, such interference with passenger traffic and congestion caused by First Amendment activities in the Central Terminal Area are counterproductive to the objectives of the Board in accommodating air commerce and air navigation or uses incidental thereto; and

WHEREAS, engaging in First Amendment activities in the Central Terminal Area at Los Angeles International Airport is incompatible with the character and function of said Central Terminal Area; and

WHEREAS, the Board of Airport Commissioners does not issue permits at Los Angeles International Airport to individuals and/or entities to engage in First Amendment activities within the Central Terminal Area at Los Angeles International Airport; and

WHEREAS, over the years, the various individuals and/or entities which have engaged in First Amendment

activities within the Central Terminal Area at Los Angeles International Airport have done so without the consent or approval of the Board of Airport Commissioners; and

WHEREAS, extensive litigation involving various city ordinances and state statutes has not resolved the issue of whether the Central Terminal Area at Los Angeles International Airport constitutes an area which is open for the conduct of First Amendment activities; and

WHEREAS, the Board of Airport Commissioners, irrespective of the extensive litigation involving First Amendment activities at Los Angeles International Airport, has never opened the Central Terminal Area at Los Angeles International Airport to First Amendment activities; and

WHEREAS, in the prudent management of Los Angeles International Airport and in order to avoid congestion and interference with the promotion and accommodation of air commerce and air navigation and uses incidental thereto and in order to protect passengers in the Central Terminal Area from unwanted or disruptive intrusions, the Board of Airport Commissioners herein determines that the Central Terminal Area at Los Angeles International Airport is not open to individuals or entities engaging in First Amendment activities; and

WHEREAS, if any entity and/or individual seeks to engage in First Amendment activities in the vicinity of the Central Terminal Area, those activities must be conducted only on the sidewalks in front of the ticketing buildings and in such a manner so as not to interfere with other persons; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Airport Commissioners that the Central Terminal Area at Los Angeles International Airport is not open for First Amendment activities by any individual and/or entity;

BE IT FURTHER RESOLVED that the Central Terminal Area at Los Angeles International Airport is only to be used for the promotion and accommodation of air commerce and air navigation or uses incidental thereto unless the Board of Airport Commissioners makes the appropriate findings pursuant to Charter Section 238.8 that a portion of said area is not currently required for the promotion or accommodation of air navigation or uses incidental thereto; and

BE IT FURTHER RESOLVED that after the effective date of this Resolution, if any individual and/or entity seeks to engage in First Amendment activities within the Central Terminal Area at Los Angeles International Airport, said individual and/or entity shall be deemed to be acting in contravention of the stated policy of the Board of Airport Commissioners in reference to the uses permitted within the Central Terminal Area at Los Angeles International Airport; and

BE IT FURTHER RESOLVED that if any individual or entity engages in First Amendment activities within the Central Terminal Area at Los Angeles International Airport, the City Attorney of the City of Los Angeles is directed to institute appropriate litigation against such individual and/or entity to ensure compliance with this Policy statement of the Board of Airport Commissioners; and

BE IT FURTHER RESOLVED if any entity or individual seeks to engage in First Amendment activities in the vicinity of the Central Terminal Area, those activities must be conducted only on the sidewalks in front of the ticketing buildings and in such a manner so as to not interfere with other persons; and

BE IT FURTHER RESOLVED that Department management is directed to monitor the conduct of any First

Amendment activities on the sidewalks in front of the ticketing buildings and report periodically to the Baord regarding such activities in order for the Board to ascertain whether any restrictions should be implemented concerning said activities; and

BE IT FURTHER RESOLVED that this action, a general policy procedure, is exempt from the requirements of the California Environmental Quality Act as provided by Article III, Section 2.n. of the Los Angeles City CEQA Guidelines.

I hereby certify that the foregoing is a true and correct copy of Resolution No. 13787 adopted by the Board of Airport Commissioners at a special meeting held Wednesday, July 13, 1983.

ELAINE E. STANIEC — Secretary
BOARD OF AIRPORT
COMMISSIONERS

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On July 21, 1986 I served the within Petition for Writ of Certiorari in re: "The Board of Airport Commissioners of The City of Los Angeles v. Jews for Jesus" in the United States Supreme Court, October Term 1985, No. 85-5808;

on the Parties in said action, by placing 3 copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Meserve, Mumpher & Hughes
Bruce A. Gothelf
Joel D. Covelman
333 South Hope Street
35th Floor
Los Angeles, CA 90071

Attorneys for Respondents

All parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on July 21, 1986, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA